Supreme Court, U. S.
FILED
SEP 21 1976
MICHAEL RODAK, JR., CLERK

in the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-186

RESTAURANT INDUSTRIES CORPORATION and
MARYLAND CASUALTY COMPANY,
Appellants,

vs.

BARBARA BYLICKI and
FLORIDA INDUSTRIAL RELATIONS COMMISSION,
Appellees.

REPLY TO PETITION FOR CERTIORARI

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REPLY TO PETITION FOR CERTIORARI

COMES NOW the Respondent, BARBARA BYLICKI, pursuant to Rule 24, Rules of the Supreme Court of the United States, and files this her Reply to Petition for Certiorari, filed by the Petitioners, RESTAURANT INDUSTRIES CORPORATION and MARYLAND CASUALTY COMPANY.

THE OPINIONS AND ORDERS OF THE COURT BELOW

The Respondent, BARBARA BYLICKI, stipulated to the Opinions and Orders of the Courts as entered by the Petitioners in their Petition for Certiorari.

STATEMENT OF GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

(1) This cause is a Workmen's Compensation case under Florida Statutes, Chapter 440. The Respondent, BARBARA BYLICKI, was a non-immigrant alien of the United States but her status at trial was merely that the Respondent, BARBARA BYLICKI, was under a Rule to Show Cause as to why she should not be deported and no determination had been made at the time of the hearing.

(2) No Florida Court made any determination nor rendered any opinion that violated any Constitutional right, the Laws and our policies of the United States regarding aliens, that was not in accord with any decision of this Court.

QUESTION PRESENTED

DID THE FLORIDA COURTS BY AWARDING WORKMEN'S COMPENSATION BENEFITS TO A NON-IMMIGRANT VISITOR ALIEN WHO HAD KNOWINGLY VIOLATED THE FEDERAL QUESTION CONTRARY TO THE APPLICABLE DECISION OF THIS COURT AND THE POLICIES OF THE GOVERNMENT OF THE UNITED STATES, AND THUS DEPRIVE THE PETITIONERS OF THEIR RIGHTS UNDER THE UNITED STATES CONSTITUTION?

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

The claimant is in the United States as an alien. She is from Germany, although she doesn't think that she is a citizen of Germany. She arrived on December 20th, 1970, in the United States. (TR. 87) She applied for a Social Security number in the month of January 1971. (TR. 33) Her file, kept by the United States Immigration and Naturalization Service, reflects that she was here as a visitor for pleasure.

She was injured on the job on October 5th, 1972, while employed as a waitress for Restaurant Industries Corp., working in a local Lum's.

An Order was entered upon Claimant's Motion for Determination of Average Weekly Wage on December 27th, 1972, finding that the Claimant was employed with the employer on October 5th, 1972, and had an average weekly

wage of $88.85 with a comp rate of $43.31. (TR. 350-354) From December 27th, 1972, through June 25th, 1974, other hearings were held for a determination of medical authorizations.

On June 25th, 1974, a final hearing was held in front of the Honorable Industrial Judge Arthur S. Seppi. At the request of the Employer/Carrier's attorney at the conclusion of the final hearing, the Judge granted him an extension of time to present further evidence with regard to the possible violation of her immigration status. (TR. 71) The Judge instructed the parties that in the meantime her benefits would be maintained. (TR. 72) On August 22nd, 1974, Claimant, by and through her attorney, filed a Motion to Re-Instate Compensation Benefits. Benefits were suspended as of July 26th, 1974. (TR. 76)

At the August 22nd, 1974, hearing the attorney for the Employer/Carrier presented evidence that at the current time, that is August 24th, 1974, the Claimant was under a Rule to Show Cause as to why she should not be deported. (TR. 99) The testimony by Employer/Carrier's witnesses was, in fact, that there were instances when an alien becomes eligible for a non-quota visa where she could be employed. (TR. 98)

REASONS FOR THE ALLOWANCE OF A WRIT OF CERTIORARI WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT FOR RESOLUTION BY THE SUPREME COURT OF THE UNITED STATES

There is no reason for the allowance of a Writ of Certiorari with briefs on the merits and oral argument for Resolution by the Supreme Court of the United States.

A. The Florida Court Has Decided a Substantial Federal Question Contrary to the Laws and Policies of the United States and the Applicable Decisions of the Supreme Court of the United States.

There is no question but that illegal employment by aliens has been a substantial federal concern for years. There is no encouragement to employment of an alien simply because an alien would be entitled to State Workmen's Compensation benefits if they are injured on the job. Any employer who benefits from any employment is not denied any Constitutional right to provide compensation insurance on all employees. The notion that Workmen's Compensation benefits would draw illegal aliens into this Country or that, once in this Country, they are working to receive Workmen's Compensation benefits, is preposterous and unsupported by any facts or reasoning. The position of the alien is very analogous to that of the illegal employed child. An injured employee, legal or illegal, still exists and must be treated, even if he is subsequently deported. The only question is who will pay. The answer is obvious, since Workmen's Compensation premiums are based upon employers' payrolls. In *Heinz v. Davidowitz*, 312 U.S. 52 (1966), this Court felt that the States had no power to change the conditions imposed by Congress upon aliens while in this Country. No decision of the Florida Courts is contrary to this holding.

By allowing an employer and/or its Workmen's Compensation insurance carrier to determine that once employed an illegal alien is not entitled to any workmen's

compensation benefits would seem to entice employers and/or their Workmen's Compensation insurance carriers to employ illegal aliens.

There just isn't any federal question that the Florida Courts have ruled upon that is in conflict with any of this Court's decisions.

B. There is no Decision by the Florida Courts that has Deprived the Petitioners of Their Rights Under the United States Constitution, or Will Continue to Deprive Those Like Situated (Employers and Their Insurance Carriers) in Florida of Their Constitutional Rights.

1. Impairment of Contract Obligations

There is no decision by the Florida Courts that would re-write any Workmen's Compensation insurance policy in the State of Florida nor have they added a new class of employees. Florida has recognized, just as New York did in the case of *Testa v. Sorrento Restaurant, Inc., (Tagminco Corp.)*, 197 New York Sup. 2nd Series, 560 (1960), wherein the Supreme Court, Appellate Division, Third Department, held that an Italian National who had been granted the right to depart the United States voluntarily, in lieu of deportation, was entitled to have an award of workmen's compensation continued notwithstanding the fact that he had entered the United States illegally. The New York Court noted that the history of Workmen's Compensation is in fact one of giving without reservation and wholly regardless of any question of wrong-doing of any kind.

2. The Denial of Substantive and Procedural Due Process

The Petitioners herein fall within a class considered by this Court that are not protected against deprivation without due process.

This Court has always recognized that a corporation cannot claim the protection of the clause of the 14th Amendment inasmuch as the liberty guaranteed by the 14th Amendment is the liberty of natural, not artificial, persons. See *Western Turf Association v. Greenberg*, 204 U. S. 359 (1907).

It is respectfully submitted that this Court should not grant plenary consideration to this Question for Briefs on the Merits and Oral Arguments for its Resolution.

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CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished by mail to the Industrial Relations Commission, Ashley Building, 1321 Executive Center Drive, East, Tallahassee, Florida 32301, and to Charles Desmond Crowley, Attorney for Petitioners, 300 S.E. 9th Street, Fort Lauderdale, Florida 33316, and Frank E. Maloney, Jr., Co-Counsel for Petitioners, of Fleming, O'Bryan & Fleming, American National Bank Building, Fort Lauderdale, Florida 33304, this 20th day of September, 1979.

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